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10/729,760	12/05/2003	Kenneth C. Boyle	P06090US00	3212

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EXAMINER

COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 01/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/729,760

Applicant(s)

BOYLE ET AL.

Examiner

Charles E. Cooley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 20-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 10-18 and 20-26 is/are rejected.
- 7) ☒ Claim(s) 5-9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

FINAL OFFICE ACTION

Drawings

1. The replacement sheets filed 18 NOV 2005 are approved.

Specification

2. The abstract is acceptable.
3. The title is acceptable.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. **Claims 1, 2, 4, 11, 12, 15, 16, 17, 18, 23, 24, 25, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Lin (US 6,599,006 B1).**

The patent to Lin (US 6,599,006 B1) discloses a mixer control method and a mixer with a housing or stand (and thus a "STAND MIXER") as labeled below, the housing or stand having an upper surface disposed above a lower surface (as seen

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below in Fig. 2); a motor within the housing connected to an output shaft; a control panel on the housing having a rotary or rotatable dial 1 that is adjustable to select an incremental motor speed and a power button 2 located in the center of the rotary dial 1 for starting the motor of the mixer; a speed indicator with multiple speed locations disposed radially from an axis of the dial as seen in Figs. 2, 3, and 5; the control panel on the upper surface of the housing; the dial having speed indicia including an off position "O" and a standby position "IL"; the power button 2 having a stop position as seen in Fig. 5; the speed indicator on the upper surface of the housing having speed indicia with multiple speed locations (the indicia "IL", "O", "I", and "II") that indicates the corresponding incremental speed of the motor.

More particularly, the patent to Lin discloses an improved structure of a control switch, and in particular, a control switch for use in food processor, juice blender, etc. Accordingly, it is an object of the present invention to provide an improved structure of a control switch for a food processor having a fully automatic control key and a disc-type rotating switch mounted with a stop button, speed I button, speed II button, and an instantaneous speed button, characterized in that the fully automatic control key is preset by means of an IC program located within the center position of the rotating shaft of the rotating switch and is controllable by pressing of the key, the logic mechanism of the operation includes a start action, in operation by pressing the key; a fast and slow setting, an instantaneous setting, in operation in rotating, stopping, rotating and stopping sequence; a stop action, including automatic stopping after operation has been completed and stopping action when the stop button is pressed; and a timing setting,

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allowing time setting of start action, fast speed rotation, slow speed rotation, instantaneous speed rotation, and stop rotation, and the timing of setting is in the sequence of fast speed rotation, slow speed rotation and instantaneous speed rotation.

Yet another object of the present invention is to provide an improved structure of a control switch of a food processor, wherein the fully automatic control key is provided within the disc, facilitating the mounting of the wires of the integrated circuit for the IC program.

Referring to FIG. 2, there is shown a disc-type rotating switch 1. The rotating switch 1 comprises a stop button, speed I rotation, speed II rotation, and an instantaneous rotation. The rotating switch 1 is in combination with a single fully automatic control key 2 which contains an IC program positioned at the central position of the rotating shaft 11 of the rotating switch 1. The control key 2 is operated by pressing of the key. For instance, the first pressing of the key 2, which enables automatic mode and then stops (with a warning), or in the course of automatic operation, the key 2 is pressed once to cause the rotation to stop.

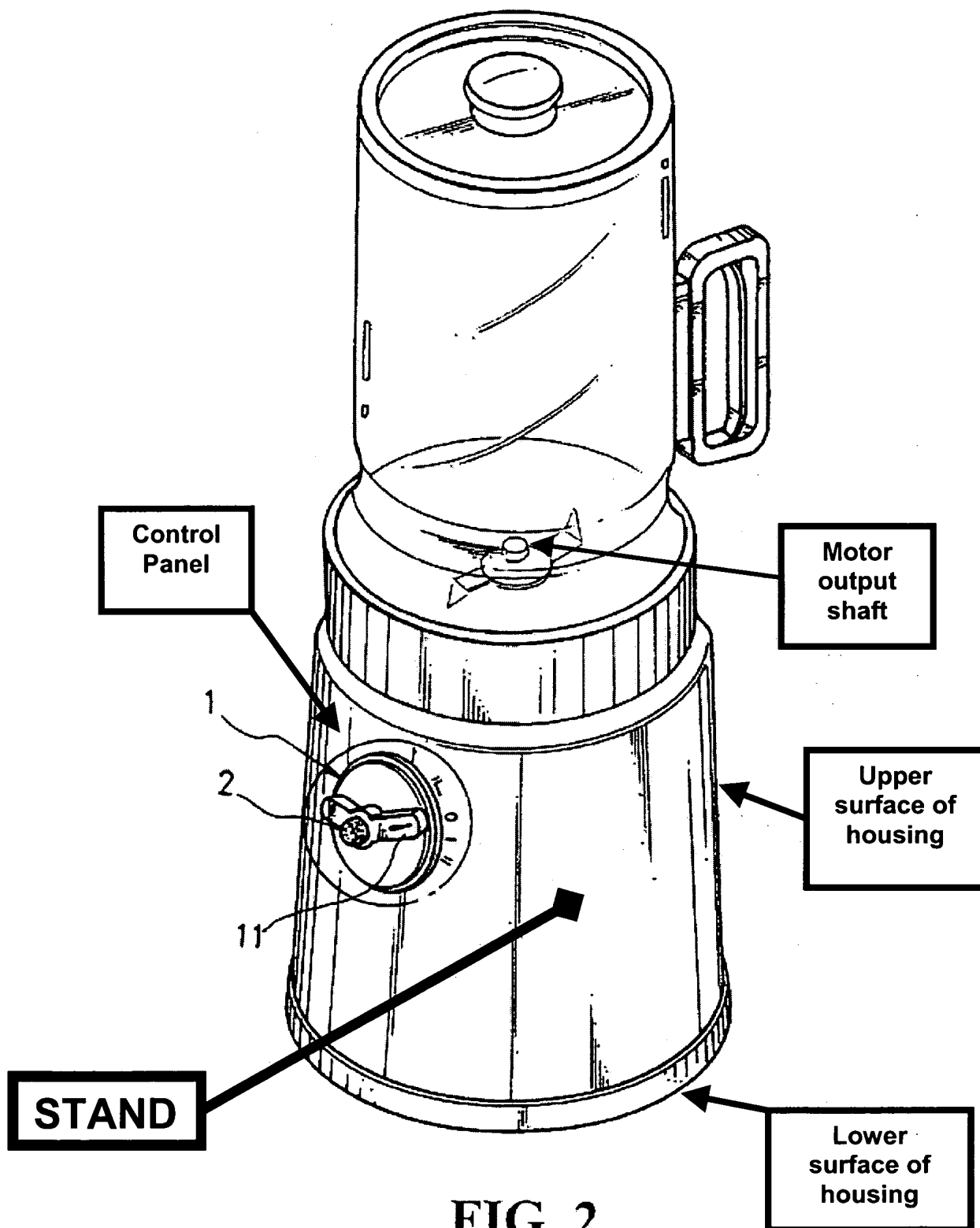
As shown in FIG. 3, the automatic control key 2 can be positioned at an appropriate position of the rotating switch 1, or may not be positioned within the rotating switch 1. As shown in FIG. 4, the position of the control key 2 is positioned at a place where the wires of the circuit board do not affect the control switch 1.

Referring to FIG. 5, there is shown the operation of the fully automatic control key 2. The operation steps are as follows: (a) Start (initial): The key is pressed and the operation starts; (b) Fast speed rotation, slow speed rotation setting: presetting a time to

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provide a fast speed rotation and a slow speed rotation. This will allow a food processor to change speed of rotation instantaneously; (c) Instantaneous rotation setting: provide setting to start rotation and to stop rotation. This provides the effect of re-mixing or another cutting of food action. (d) Stop action: This provides two actions, either stop the rotation when the entire processing is completed or stop rotation when the control switch is pressed; (e) Time setting: enables the setting of time for the start operation, fast speed rotation, slow speed rotation and instantaneous rotation. In accordance with the present invention, the setting of the logic mechanism is in fast speed rotation, slow speed rotation and instantaneous speed rotation.

In accordance with the present invention, the advantages are as follows: (i) The control key does not occupy space and will not affect the control switch, and the operation of the key is fully automatic. (ii) No monitoring of the food processor is needed as the control key provides automatic operation. (iii) The operation can be completed within a preset time. Most importantly, after the operation sequence is completed, the operation is stopped automatically (iv) The stop setting can be used in the operation. That is when the stop button is pressed, the rotation is stopped.



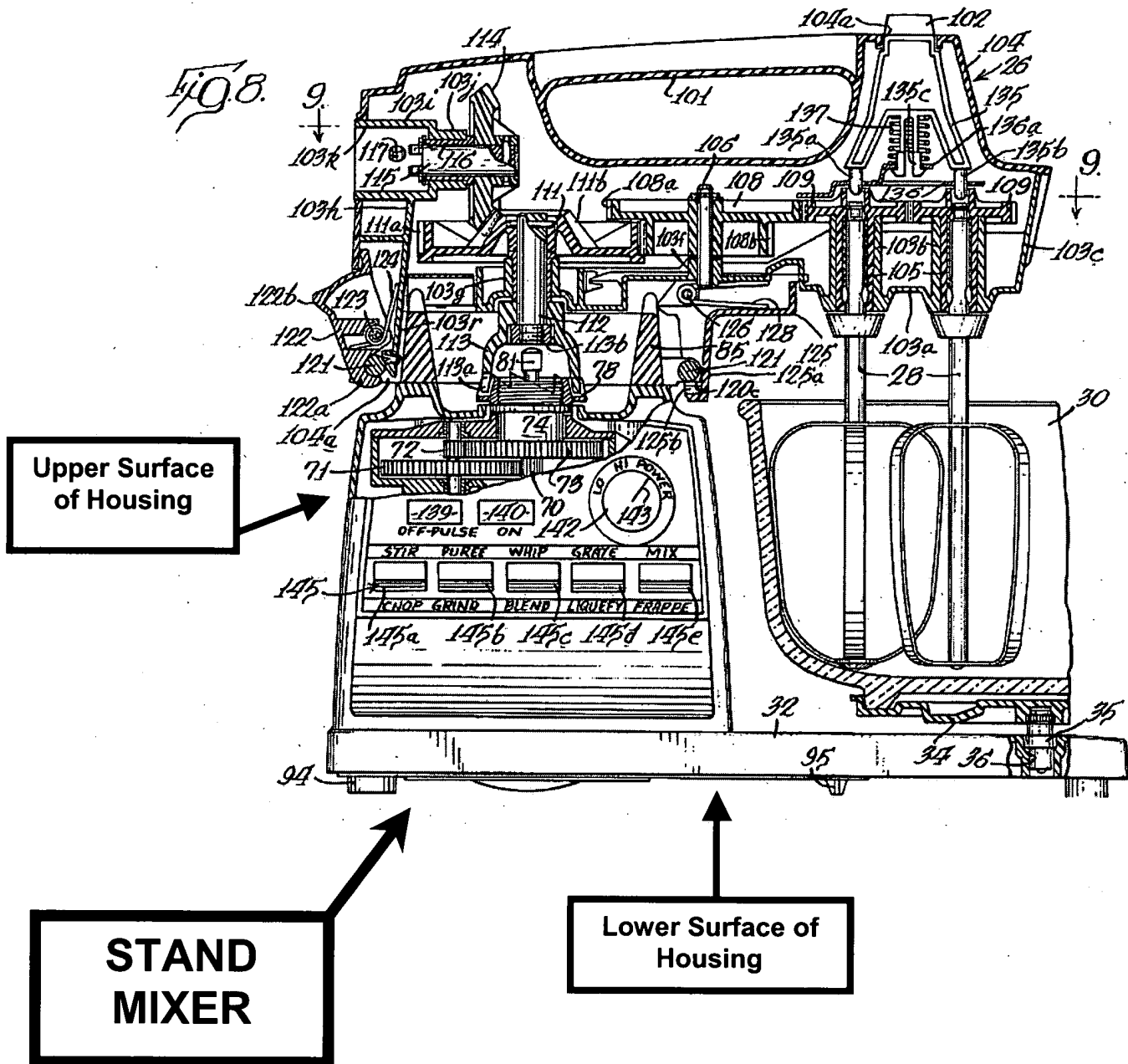
6. Claims 18 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Ernster et al. (US 3,951,351).

The patent to Ernster et al. '351 discloses a stand mixer (Figs. 1, 2, 4, 8, and 15) with a housing 24, 32 having an upper surface (as labeled below) disposed above a lower surface 32; a motor 46 within the housing connected to an output shaft 62; a control panel (Figs. 1, 2, and 8) on the housing having a power switch 141, a rotatable speed selector 142 to change motor speed, and a speed indicator 143 with speed indicia (Fig. 8) located on the upper surface of the housing; the control panel being located on the upper surface of the housing as seen below.

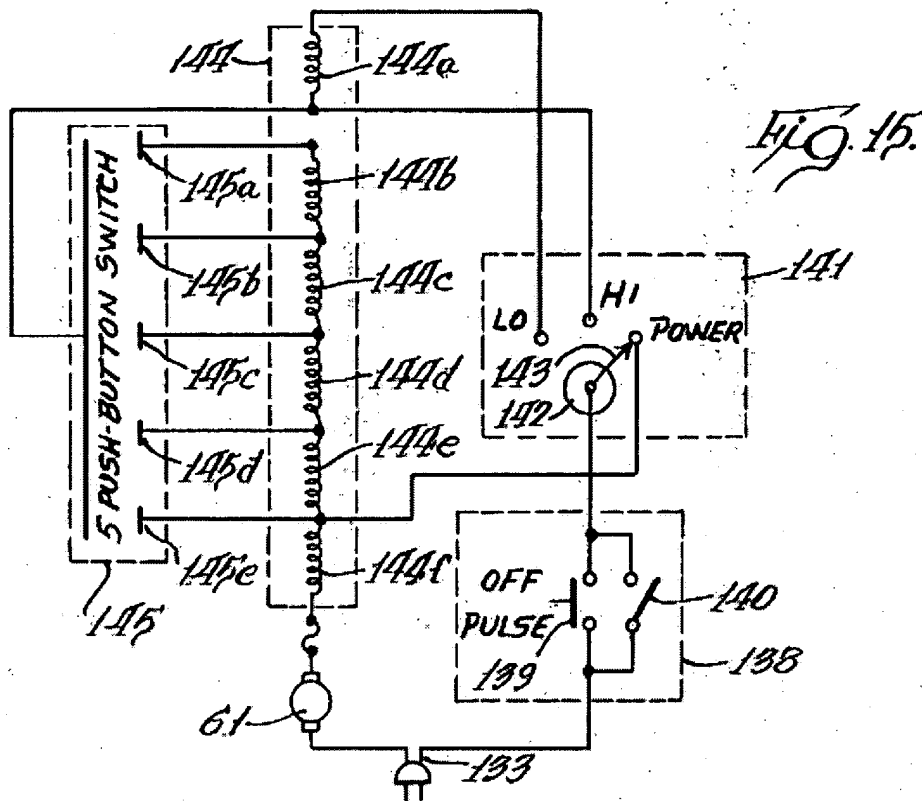
7. Claims 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Ernster et al. (US 3,951,351).

The patent to Ernster et al. '351 discloses a stand mixer (Figs. 1, 2, 4, 8, and 15) with a housing 24, 32 having an upper surface (as labeled below) disposed above a lower surface 32; a motor 46 within the housing connected to an output shaft 62; a control panel (Figs. 1, 2, and 8) comprising a rotary dial speed selector 142 to change motor speed; the control panel being located on a top portion of the upper surface of the housing as seen below; the control panel having a speed indicator 143 and a power button 140 actuable by a user for starting the motor 46 (see Fig. 15).

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Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 3, 10, 13, 14, 20, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin (US 6,599,006 B1) in view of Piland (US 5,347,205).

Lin (US 6,599,006 B1) does not disclose the recited lens or lights/illuminators. The patent to Piland discloses a mixer with a control panel 12 having lights/illuminators 19, 21, 31, and 32-38 in the form of light emitting diodes that inherently have a lens that the produced light passes through. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the control

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panel of Lin with lights/illuminators in the form of light emitting diodes with lens as suggested by Piland for the purpose of providing the operator with a visual indication of the operating status/readiness of the mixer and the speed selection of the mixer (col. 4, lines 6-9).

With regard to amended claim 3, it is believed obvious that the combination of Lin in view of Piland above would inherently and necessarily locate the lens at the respective indicia "IL", "O", "I", and "II" adjacent the rotary dial 1 in Lin such that the proper indicia and corresponding speed selection is indicated to a user, via illumination of the lens. To locate the lens at other locations not specifically correlated to the speed indicia would be nonsensical.

11. Claims 20, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ernster et al. (US 3,951,351) in view of Piland (US 5,347,205).

Ernster et al. (US 3,951,351) does not disclose the recited illuminators. The patent to Piland discloses a mixer with a control panel 12 having illuminators 19, 21, 31, and 32-38 in the form of light emitting diodes. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the control panel of Ernster et al. (US 3,951,351) with illuminators in the form of light emitting diodes as suggested by Piland for the purpose of providing the operator with a visual indication of the operating status and the speed selection of the mixer (col. 4, lines 6-9).

Allowable Subject Matter

12. Claims 5-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Amendment

13. Applicant's arguments filed 18 DEC 2005 have been fully considered but they are not deemed to be persuasive.

Applicant is reminded that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Turning to the rejection of the claims under 35 U.S.C. § 102(b), it is noted that the terminology in a pending application's claims is to be given its broadest reasonable interpretation (*In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)) and limitations from a pending application's specification will not be read into the claims (*Sjolund v. Musland*, 847 F.2d 1573, 1581-82, 6 USPQ2d 2020, 2027 (Fed. Cir. 1988)).

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Anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention. See *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1570, 7 USPQ2d 1057, 1064 (Fed. Cir.), cert. denied, 488 U.S. 892 (1988); *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Moreover, anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or the recognition of properties that are inherently possessed by the prior art reference. *Verdegaal Brothers Inc. v. Union Oil co. of California*, 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir. 1987), cert. denied, 484 U.S. 827 (1987). A prior art reference anticipates the subject matter of a claim when that reference discloses each and every element set forth in the claim (*In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994) and *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990)); however, the law of anticipation does not require that the reference teach what Applicant is claiming, but only that the claims "read on" something disclosed in the reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984) (and overruled in part on another issue), *SRI Intel v. Matsushita Elec. Corp. Of Am.*, 775 F.2d 1107, 1118, 227 USPQ 577, 583 (Fed. Cir. 1985). Also, a reference anticipates a claim if it discloses the claimed invention such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention. See *In re Graves*, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995), cert. denied, 116

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S.Ct. 1362 (1996), quoting from *In re LeGrice*, 301 F.2d 929, 936, 133 USPQ 365, 372 (CCPA 1962).

With respect to the applied prior art under 35 U.S.C. § 102(b), the examiner has explicitly demonstrated how the references disclose each and every element set forth in the claims and how the pending claims read on the disclosure of the reference, hence the rejection is considered proper.

The pith of Applicant's arguments is primarily directed to two words found in the preamble of the claims, namely a "stand mixer". First, it is without question that the prior art devices are indeed mixers and the examiner believes that said devices can reasonably be deemed stand mixers within the broad scope of that term (*In re Zletz*, supra) since the Lin and Ernster mixers having housings or stand structure (as labeled in the Figures accompanying the rejections) that supports other elements of the mixer (such as the mixing receptacle and mixer tools). Thus, for Applicant to assert that the prior art devices are not stand mixers is not a compelling argument.

Furthermore, what particular structure does the recitation of a "stand mixer" necessarily invoke. The claimed mixer structure is quite broadly set forth with expansive terms such a housing with surfaces, a motor, and details of the control panel. This broad language hardly supports Applicant's contention that anticipation is voided since the prior art are not stand mixers (whatever structure that may or may not encompass).

Applicant further argues intended uses of the prior art mixers (such as food processing, blending, chopping, slicing, dicing, cutting. etc.), however, these remarks

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have not been afforded any patentable weight because it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647; *In re Sebald*, 122 USPQ 527; *In re Lemin et al.*, 140 USPQ 273; *In re Sinex*, 135 USPQ 302; *In re Pearson*, 181 USPQ 641. It is well settled that the intended use of an apparatus is not germane to its patentability. *In re Self*, 671 F.2d 1344, 213 USPQ 1 (CCPA 1982); *In re Yanush*, 477 F.2d 958, 177 USPQ 705 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 168 USPQ 530 (CCPA 1971); *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967).

With respect to the arguments regarding claim 3, note the remarks in section (10) above. Furthermore, the patent to Piland teaches a mixer with a control panel having lights/illuminators in the form of light emitting diodes that inherently have a lens that the produced light passes through. The fact that the lens are oriented in a linear fashion is immaterial to the rejection, since it is the teaching of providing a control panel on a mixer with lights/illuminators in the form of light emitting diodes with lens for the purpose of providing the operator with a visual indication of the operating status/readiness of the mixer and the speed selection of the mixer. The particular geometrical layout of the lights/lens on the control panel is not relied upon and as noted above, the combination of Lin in view of Piland above would inherently and necessarily locate the lens at the respective indicia adjacent the rotary dial in Lin such that the proper indicia and corresponding speed selection is indicated to a user, via illumination of the lens.

In view of the amendments made to the claims, rejections over the Ernster et al. '351 reference are proffered for Applicant's consideration.

14. The declaration under 37 CFR 1.132 filed 18 NOV 2005 is insufficient to overcome the rejections of claims based upon the applied prior as set forth in the last or in this Office action because it merely sets forth opinions regarding the uses of various kitchen appliances and said opinions are not commensurate with the scope of the pending claims. The intended uses of the various appliances referred to by inventor Rob Brueckner are not germane to patentability as discussed above. The assertions regarding the apparent structure of a stand mixer are noted, but such structure is not present in the pending claims.

In conclusion, the amendments made in the instant application are not deemed of a substantive nature to define over the prior art and thus the rejections are considered proper.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED

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STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION. ANY RESPONSE FILED AFTER THE MAILING DATE OF THIS FINAL REJECTION WILL BE SUBJECT TO THE PROVISIONS OF MPEP 714.12 AND 714.13.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in cursive script, reading "Charles", followed by a stylized flourish or second signature.

Charles E. Cooley
Primary Examiner
Art Unit 1723

2 January 2006